



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,438	08/20/2001	Yoshiharu Matahira	01503/HG	6058

7590 12/12/2001
FRISHAUF, HOLTZ, GOODMAN
LANGER & CHICK, P.C.
767 Third Avenue - 25th Floor
New York, NY 10017

EXAMINER	
GOLLAMUDI, SHARMILA S	
ART UNIT	PAPER NUMBER

1616

DATE MAILED: 12/12/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,438

Applicant(s)

MATAHIRA ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

Art Unit: 1616

DETAILED ACTION

Claims 1-16 are included in the prosecution of this application.

Preliminary Amendments are acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0652012.

EP 0652012 discloses a composition for chronic fatigue syndrome containing of amino acids, sugar, and calcium in instant amounts (Note examples 1 and 25, claim 6).

Claims 1-4, 6-10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Carniglia et al (5391550).

Carniglia et al disclose a composition to increase energy through the increase in ATP blood level. The dietary supplementation contains histidine, D-ribose, and magnesium phosphate (Note Table 1 and col. 7, lines 10-45).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1616

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simone (5397786).

Simone discloses a rehydration drink for fatigue containing a carbohydrate such as D-ribose, an ammonia neutralizer such as histidine, creatine, vitamins C and E (col. 2, line 50, col. 3, line 24, Table 1/2).

Simone does not teach the specific use of ribose and histidine in examples.

It would have been to one of ordinary skill in the art at the time the invention was made to substitute histidine and ribose in the example given since Simone suggests histidine as possible ammonia neutralizer and ribose as a possible carbohydrate to be used in the invention. Further, since Simone provides the general guidance for a rehydration drink, it is deemed obvious to one of ordinary skill in the art at the time the invention was made to manipulate the amount used to obtain the best possible results.

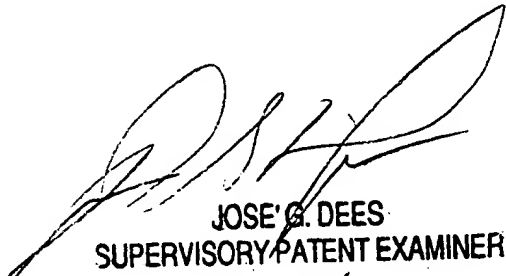
Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG



JOSE G. DEES
SUPERVISORY PATENT EXAMINER
1616